

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

UNITED STATES OF AMERICA

VS.

CRIMINAL NO. 3:15CR69-HTW-FKB-1

SAM WAGGONER

**PLEA HEARING**

BEFORE THE HONORABLE HENRY T. WINGATE  
UNITED STATES DISTRICT JUDGE  
AUGUST 21ST, 2015  
JACKSON, MISSISSIPPI

APPEARANCES:

FOR THE GOVERNMENT: MR. DARREN J. LAMARCA  
MR. J. SCOTT GILBERT

FOR THE DEFENDANT: MR. NICHOLAS R. BAIN

REPORTED BY: MARY VIRGINIA "Gina" MORRIS, RMR, CRR  
Mississippi CSR #1253

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501 E. Court, Suite 2.500  
Jackson, Mississippi 39201  
(601) 608-4187

1 THE COURT: You may be seated. Call your case,  
2 please.

3 MR. LaMARCA: Your Honor, the case before the court is  
4 *United States v. Sam Waggoner*, criminal number 3:15cr69.  
5 Mr. Waggoner is present with his attorney, Nick Bain, and is  
6 present for an intent to plead guilty to an information  
7 charging bribery.

8 If I may, your Honor, with me at counsel table is  
9 Scott Gilbert, assistant United States attorney. And inside  
10 the bar on the government's behalf are two FBI agents, Molly  
11 Blythe and Tye Breedlove. Thank you.

12 THE COURT: Thank you. Mr. Bain.

13 MR. BAIN: Yes, your Honor.

14 THE COURT: You're here with your client Mr. Sam  
15 Waggoner?

16 MR. BAIN: Yes, sir.

17 THE COURT: And I understand your client wishes to  
18 enter a plea of guilty to a criminal information. Is that  
19 correct?

20 MR. BAIN: That's correct, your Honor.

21 THE COURT: Will you all approach the podium, please.

22 (COMPLIED WITH REQUEST)

23 THE COURT: Good afternoon, Mr. Waggoner.

24 THE DEFENDANT: Good afternoon, sir.

25 THE COURT: I understand you wish to enter a plea of

1 guilty to the criminal information.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: I need to ask you a number of questions  
4 which must be answered truthfully and under oath. So at this  
5 time I'll have you sworn.

6 THE DEFENDANT: Yes, sir.

7 (OATH ADMINISTERED TO THE DEFENDANT)

8 THE COURT: Now, do you understand that you have now  
9 been sworn and that if you give untruthful answers to any of my  
10 questions, that you could be prosecuted for perjury?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You understand that perjury is lying under  
13 oath.

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Now, how old are you?

16 THE DEFENDANT: 61.

17 THE COURT: How much schooling have you had?

18 THE DEFENDANT: Bachelor of science from Delta State.

19 THE COURT: All right. And that means that you can  
20 read and write.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have you taken any drugs of any type,  
23 prescription drugs or nonprescription drugs, or consumed any  
24 alcoholic beverages within the last 24 hours?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: What did you take?

2 THE DEFENDANT: Prescription medication.

3 THE COURT: And what is that medication?

4 THE DEFENDANT: It's quite a lot.

5 THE COURT: Do you have a list?

6 THE DEFENDANT: Ms. Sullivan has it.

7 THE COURT: Okay. And with regard to the medications  
8 that you're taking, do any of those medications affect your  
9 ability to understand what is going on here today?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: Are any of those medications ones that  
12 would cause you to experience any drowsiness?

13 THE DEFENDANT: No, sir, your Honor.

14 THE COURT: Or any hallucinations?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: So how do those drugs affect you? Just  
17 describe in general what effect those drugs have on you.

18 THE DEFENDANT: Like three blood pressure, thyroid,  
19 arthritis, cholesterol.

20 THE COURT: Are any of those drugs for any mental  
21 disability?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: So, then, those drugs do not alter the way  
24 you comprehend reality?

25 THE DEFENDANT: That's correct. Yes, sir.

1 THE COURT: Now, have you ever been treated by any  
2 doctor, psychiatrist or psychologist or in any hospital, clinic  
3 or mental institution for any mental disease or disorder?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: In order to enter a valid plea today you  
6 must be mentally competent. That means you're able to  
7 understand what's happening here today. That also means that  
8 you're able to consult with your attorney and to understand his  
9 advice to you. So under this definition of competence, are you  
10 competent today?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: You must also have been competent on the  
13 date which is charged in the criminal information. The  
14 criminal information recites dates beginning sometime in or  
15 around 2012 and continuing until at least August 26, 2014. Did  
16 you see that in the criminal information?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: So I'm asking you specifically about those  
19 dates that are charged in the criminal information. Look down  
20 at paragraph six.

21 THE DEFENDANT: I don't think those dates are right.

22 THE COURT: Do you see down on paragraph six?

23 (COUNSEL AND DEFENDANT CONFERRED)

24 THE DEFENDANT: Okay. Yes, your Honor.

25 THE COURT: Do you see them now?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. Now, with regard to those dates,  
3 during those time periods, did you know the difference between  
4 right and wrong?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Did you know that what is charged as a  
7 crime in this criminal information, in fact, was wrong?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: You were charged in this criminal  
10 information with having violated Section 666(a)(2) of Title 18,  
11 United States Code. Now, did you read this criminal  
12 information entirely?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Did you discuss it with your lawyer?

15 (COUNSEL AND DEFENDANT CONFERRED)

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: So, then, with regard to the question I  
18 asked a few moments ago that relative to these dates that are  
19 charged in the criminal information, during those time periods,  
20 did you know the difference between right and wrong?

21 THE DEFENDANT: Yes, your Honor, I did know.

22 THE COURT: Now I need to ask defense counsel.

23 MR. BAIN: Yes, your Honor.

24 THE COURT: Do you raise any objections concerning  
25 your client's competence?

1 MR. BAIN: No, your Honor.

2 THE COURT: Are you submitting that your client is  
3 competent today to enter a plea of guilty?

4 MR. BAIN: Yes, he is, your Honor.

5 THE COURT: Are you further contending that he was  
6 competent on the dates charged in the criminal information for  
7 the commission of the crime therein?

8 MR. BAIN: Yes, sir, your Honor.

9 THE COURT: And, furthermore, with regard to his  
10 mental health, have you investigated the effect that the drugs  
11 that he's taking may have upon his capacity to understand what  
12 is going on?

13 MR. BAIN: Yes, your Honor. No claims of any type of  
14 impairment of that capacity.

15 THE COURT: Are you comfortable with the assertion  
16 that he fully comprehends everything which is occurring here  
17 today?

18 MR. BAIN: Yes, sir, your Honor.

19 THE COURT: I turn now to the prosecution. Does the  
20 prosecution make any objection concerning the defendant's  
21 competence?

22 MR. LaMARCA: No, sir, we do not.

23 THE COURT: And I'm asking whether you make any  
24 objections concerning his competence in any respect.

25 MR. LaMARCA: We do not, your Honor.

1 THE COURT: All right. Thank you. Having asked the  
2 court -- having asked the defendant various questions  
3 concerning his competence, this court is satisfied that the  
4 defendant is competent to enter a plea of guilty. The court is  
5 further persuaded that he was competent to know the difference  
6 between right and wrong on the dates charged in the criminal  
7 information.

8 Now, Mr. Waggoner, the law requires that you be  
9 adequately and competently represented by your lawyer. Have  
10 you had enough time to discuss your case with your lawyer?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Are you satisfied with the amount of time  
13 he's spent with you?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Are you satisfied with his advice to you?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: If you have any complaints about the way  
18 your attorney has handled your case, you need to make that  
19 known to me. So I ask you at this time, do you have any  
20 complaints at all about the way he's handled your case?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: Do you further understand that if you  
23 actually have complaints, by telling me that you have no  
24 complaints at this time the court could very well determine  
25 that any complaints you make later concerning this matter would



1 be considered by the court to have been waived by you? Do you  
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: So again I ask you, do you have any  
5 complaints at all about the way your attorney has handled your  
6 case?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: Now I move to a recitation of your rights  
9 to trial. Under the Constitution and laws of the United  
10 States, as a criminal defendant before the court you have  
11 certain rights. And I'm sure your lawyer has explained these  
12 rights, but I need to go over them again with you.

13 You are entitled to a trial by jury or you're entitled  
14 to a trial before the judge, which is called a bench trial.  
15 Should there be a bench trial, then I will be the judge and  
16 jury and make all decisions under both of those categories. Do  
17 you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: When a jury trial is requested and that  
20 trial goes forth, then there will be two triers -- there will  
21 be two judges in the courtroom. There will be the judge of the  
22 law and the judge of the facts. The judge of the law would be  
23 myself; the judge of the facts will be the jury. And the jury  
24 will make all the determinations concerning whether you're  
25 guilty or not guilty under the evidence. Do you understand

1 that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: So, then, you are entitled to a trial by  
4 jury if you want one. And even though you stated that you wish  
5 to enter a plea of guilty today, you can still change your mind  
6 and ask for a jury trial or a bench trial if you so desire. Do  
7 you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: If you choose to be tried by a jury, then  
10 I will impanel 12 people in the jury box to serve as your jury,  
11 and all 12 of those people would have to vote to find you  
12 guilty before you could be convicted. Do you understand that  
13 too?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you further understand that at trial  
16 you would be presumed to be innocent, and the prosecution would  
17 be required to prove your guilt by proof beyond a reasonable  
18 doubt and you would not have to prove that you were innocent?  
19 Do you understand that too?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Now, I mentioned this point about the  
22 burden of proof. The government would have to prove that you  
23 are guilty by proof beyond a reasonable doubt. In other words,  
24 that means that in order to find you guilty, the jury would  
25 have to be persuaded that the jury has no reasonable doubt

1 concerning your guilt. Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: So you've heard that term before, proof  
4 beyond a reasonable doubt?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: During the course of the trial, the  
7 government would have to present its witnesses in open court  
8 and in your presence. And after the government direct examines  
9 the witnesses, then your attorney would have the right to  
10 cross-examine those witnesses.

11 And, of course, by your sitting next to your lawyer,  
12 you'll be able to tell your lawyer what questions you might  
13 wish for your lawyer to ask those witnesses. Do you understand  
14 all that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: So then your lawyer would have -- your  
17 lawyer on your behalf would have the right to cross-examine  
18 those witnesses. Your lawyer would also have the right to  
19 object to any exhibits that the government may seek to  
20 introduce during the course of the trial. Do you understand  
21 that too?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: And, of course, you'll have the  
24 opportunity to review those exhibits prior to the trial. And  
25 then during trial your counsel on your behalf could object if

1 your counsel feels that those exhibits and their contents  
2 violate the rules of evidence. Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you further understand that if any  
5 objections are made during the course of trial that I will rule  
6 on those objections before the subject of the objections could  
7 be revealed to the jury? Do you understand that too?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that at trial you would  
10 be presumed to be innocent? That means that you will start the  
11 trial with a clean slate. Even though you would have a charge  
12 against you, that charge would not carry any weight of  
13 evidence, because the charge would be construed as only an  
14 accusation.

15 But when you start the trial, you will start the trial  
16 as a clean slate with the government having the burden to prove  
17 that you were guilty by proof beyond a reasonable doubt. Do  
18 you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: And if the government fails in its proof  
21 against you, you recognize then that the jury could be required  
22 to find you not guilty. Do you understand that too?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: For instance, right now if you were to  
25 stop these proceedings and if these proceedings right now were

1 a trial and if I had a jury and I told the jury to vote as to  
2 whether you're guilty or not guilty, since the jury would not  
3 have heard any evidence, the jury would have to vote not  
4 guilty. Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Now, I've said that the prosecution would  
7 have the burden of proof and that burden must be proof beyond a  
8 reasonable doubt. You would not have to prove anything. You  
9 could sit mute at the counsel table. You could simply have  
10 your lawyer cross-examine or not cross-examine all of the  
11 witnesses or object to or not object to all the exhibits.

12 You could take whatever participation at trial you  
13 wished to take and you still would not have to produce any  
14 evidence on your own nor even to testify. Do you understand  
15 that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And if you chose to go to trial and not  
18 produce any evidence or not call any witnesses or even not  
19 testify, I would advise the jury that that's your  
20 constitutional right, that you have a right to rely upon the  
21 presumption of innocence and the weakness in the government's  
22 case that might be revealed during the course of  
23 cross-examination. Do you understand all of that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: On the other hand, if you elect to go to

1 trial, then you could call witnesses and you could use the  
2 subpoena power of this court to get those witnesses here in  
3 court. Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Have you ever heard that term "subpoena"  
6 before?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: So you know it is a legal document that  
9 would require a person served and named to appear at court at a  
10 certain time and place. Do you understand all that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: And do you also understand that if you  
13 wish to testify that you could do so and subject yourself to  
14 direct examination from questions by your lawyer and then you  
15 would have to answer questions from the prosecution on  
16 cross-examination? Do you understand all that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And if you elected to testify, do you  
19 understand that I would give an instruction to the jury  
20 advising the jury that the jury would not be warranted in  
21 disbelieving your testimony simply because you are the  
22 defendant? Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: I will tell the jury that the jury's to  
25 evaluate your testimony just as the jury is to evaluate the

1 testimony of every other witness who might appear before the  
2 court, taking into account all factors of credibility, but that  
3 the jury would not be warranted in disbelieving your testimony  
4 simply because you are the defendant. So do you understand all  
5 of this?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Now, if you elect to continue these  
8 proceedings and enter a plea of guilty to the criminal  
9 information, you do understand there would be no trial.

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And do you understand that if you elect to  
12 proceed there will be no further opportunity to request the  
13 court to have a bench trial or provide to you a jury trial? Do  
14 you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you further understand that should you  
17 continue these proceedings towards a plea of guilty to be  
18 accepted by the court, that I'll have to ask you various  
19 questions concerning your plea? Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: In fact, I have to satisfy myself that you  
22 have met the elements of the charge against you, that you are,  
23 in fact, guilty of the charge that the government has waged  
24 against you. So I'll have to ask you some specific questions  
25 with regard to that matter. And do you understand that by

1     answering those questions and by answering that you committed  
2     the matters charged against you you would be incriminating  
3     yourself? Do you understand that?

4             THE DEFENDANT: Yes, your Honor.

5             THE COURT: And do you understand that under our  
6     Constitution of the United States that one can not be compelled  
7     to be a witness against one's self? That is, no defendant can  
8     be compelled to testify against himself in a criminal  
9     proceeding. Do you understand that?

10            THE DEFENDANT: Yes, your Honor.

11            THE COURT: So, then, you understand that the only way  
12     I will accept your plea of guilty is by my questioning you with  
13     regard to the charge against you and with regard to the  
14     activities that the government accuses you of having committed  
15     that will make you guilty of the charge here. Do you  
16     understand all that?

17            THE DEFENDANT: Yes, your Honor.

18            THE COURT: Are you prepared to waive your right then  
19     not to speak to the court about this matter?

20            THE DEFENDANT: Yes, your Honor.

21            THE COURT: And are you prepared to continue these  
22     proceedings towards entering a plea of guilty?

23            THE DEFENDANT: Yes, your Honor.

24            THE COURT: And giving up all of the rights I have  
25     been explaining to you?



1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Now, let's talk about the charge against  
3 you. You're charged by way of criminal information. This  
4 charge recites as follows. The United States Attorney  
5 charges -- I point out at this point that had you been indicted  
6 and had we now been proceeding on an indictment, this first  
7 line would read "The grand jury charges." That is the way  
8 indictments read.

9 But we're not proceeding on an indictment. We're  
10 proceeding on a charge that's made against you by the United  
11 States Attorney's Office. And I'll talk to you about the  
12 particulars of that a little later on. But this criminal  
13 information recites as follows.

14 At all times relevant to this information, one, the  
15 Mississippi Department of Corrections, MDOC, was a state  
16 government agency as that term is defined in Section 666(d),  
17 Title 18, United States Code, and which received benefits in  
18 excess of \$10,000 annually between 2007 and 2014 under federal  
19 programs providing federal assistance to MDOC.

20 Paragraph two, Global Tel-Link -- that's capital  
21 T-E-L, dash, L-I-N-K -- (GTL) was under contract with the State  
22 of Mississippi to provide telephone services to inmates at MDOC  
23 facilities.

24 Three: The defendant, Sam Waggoner, was a paid  
25 consultant for GTL.

1 Four: GTL paid the defendant, Sam Waggoner, 5 percent  
2 of the revenue generated by the inmate telephone services  
3 contract it had with the State of Mississippi.

4 Five: Christopher B. Epps was the commissioner of  
5 MDOC.

6 Six: That beginning sometime in or about 2012 and  
7 continuing until at least August 26, 2014, in Hinds County in  
8 the Northern Division of the Southern District of Mississippi  
9 and elsewhere, the defendant, Sam Waggoner, did knowingly and  
10 corruptly give, offer or agree to give something of value to  
11 Christopher B. Epps with intent to influence or reward  
12 Christopher B. Epps in connection with the business transaction  
13 or series of transactions of the Mississippi Department of  
14 Corrections involving something of value of \$5,000 or more,  
15 that is, the awarding and the retention of contracts to  
16 Waggoner's employer GTL for inmate telephone services at MDOC  
17 facilities.

18 Specifically, on or about July 30th, 2014, and on or  
19 about August 26, 2014, the defendant, Sam Waggoner, paid  
20 kickbacks in the form of cash generated by his monthly  
21 commission from GTL to Christopher B. Epps, all in violation of  
22 Section 666(a)(2), Title 18, United States Code.

23 Now, Mr. Waggoner, did you read all of that prior to  
24 coming in here today?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: And did you understand everything that I  
2 read there?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: This criminal information in paragraph  
5 seven and eight addresses criminal forfeitures. Right above  
6 paragraph seven is a, quote, Notice of Intent to Seek Criminal  
7 Forfeiture, close quote, all in caps.

8 Seven: As a result of committing the offense alleged  
9 in this indictment, the defendant shall forfeit to the United  
10 States all property involved in or traceable to property  
11 involved in the offense, including, but not limited to, all  
12 proceeds obtained directly or indirectly from the offense and  
13 all property used to facilitate the offense. The defendant  
14 shall forfeit a money judgment in the amount of \$200,000.

15 Paragraph eight: Further, if any property described  
16 above as a result of any act or omission of the defendant, A,  
17 cannot be located upon the exercise of due diligence; B, has  
18 been transferred or sold to or deposited with a third person;  
19 C, has been placed beyond the jurisdiction of the court; D, has  
20 been substantially diminished in value; or, E, has been  
21 commingled with other property which cannot be divided without  
22 difficulty, then it is the intent of the United States to seek  
23 a judgment of forfeiture of any other property of the defendant  
24 up to the value of the property described in this notice or any  
25 bill of particulars supporting it, all pursuant to Section

1 981(a)(1)(A) and (C), Title 18, United States Code, and Section  
2 2461, Title 28, United States Code. Did you understand all of  
3 that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: So, then, you know what the charge against  
6 you as recited in the criminal information recites. Do you  
7 understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And as I told you earlier, this is a  
10 criminal information signed by the acting United States  
11 Attorney, who is Mr. Harold Brittain. And he has signed this  
12 document at the bottom of page two. That is the power of an  
13 United States Attorney to bring a criminal indictment against a  
14 defendant. So you do understand that Mr. Brittain had the  
15 authority to sign this criminal information.

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you further understand that you had an  
18 option not to proceed under this criminal information? Has all  
19 of that been explained to you?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Have you been arraigned on this charge?

22 (COUNSEL AND DEFENDANT CONFERRED)

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And when were you arraigned?

25 THE DEFENDANT: 9:00 this morning.

1 MR. BAIN: Your Honor, we just came up from that.

2 THE COURT: And who was the magistrate judge?

3 MR. BAIN: Judge Ball.

4 THE COURT: All right. And you appeared before  
5 Judge Ball previously, and at that time you were advised that  
6 you were charged by way of criminal information.

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Are you satisfied with the explanation he  
9 provided to you as the distinction between a criminal  
10 information and an indictment?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: And you recognize that if you choose even  
13 now not to undergo these proceedings under a criminal  
14 information that you could simply tell me, and then I will stop  
15 these proceedings and then wait to see if you are subsequently  
16 indicted. And only then are you -- can you be taken to a  
17 proceeding against your agreement with the mode of proceeding.  
18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: So, now, are you prepared to go forward  
21 under this criminal information?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: At your session before the United States  
24 magistrate judge, did you sign a waiver of grand jury  
25 proceeding?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Now let me turn to the prosecution. Do  
3 you agree with that?

4 MR. LaMARCA: I do, your Honor.

5 THE COURT: Do you have a copy of it?

6 MR. LaMARCA: I do not. It was presented to the court  
7 about an hour ago entitled "Waiver of Indictment." So the  
8 magistrate court does have that document.

9 THE COURT: Were you present during that hearing?

10 MR. LaMARCA: I was, your Honor.

11 THE COURT: And did the judge accept that waiver of  
12 indictment?

13 MR. LaMARCA: He did.

14 THE COURT: And indicate that he would file same in  
15 the record?

16 MR. LaMARCA: He did.

17 THE COURT: All right. Thank you. Mr. Bain, do you  
18 agree too?

19 MR. BAIN: Yes, your Honor.

20 THE COURT: Since you now have waived your right to be  
21 indicted by a grand jury, then I can proceed with this criminal  
22 information. Is that your choice, that I proceed with this  
23 criminal information?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Now, I have read this criminal information

1 to you which charges you under 18, United States Code, Section  
2 666(a)(2), that makes it a crime for anyone to corruptly give,  
3 offer or agree to give anything of value to any person with  
4 intent to influence or reward an agent of an organization or of  
5 a state, local or Indian tribal government or any agency  
6 thereof that receives more than \$10,000 in federal assistance  
7 in any one-year period in connection with any business  
8 transaction or series of transactions of such organization,  
9 government or agency involving anything of value of \$5,000 or  
10 more.

11 So, then, if you were to elect even at this present  
12 time to go to trial, then the prosecution would have to prove  
13 the following.

14 First: That Christopher Epps was an agent of the  
15 State of Mississippi as the commissioner of the Mississippi  
16 Department of Corrections;

17 Second: That the Mississippi Department of  
18 Corrections was an organization that received in any one-year  
19 period benefits in excess of \$10,000 under a federal program  
20 involving a grant;

21 Third: That you corruptly gave with the intent to  
22 influence Christopher Epps in connection with any business or  
23 transaction of the Mississippi Department of Corrections; and,

24 Fourth: That the business or transaction or series of  
25 transactions involved anything of value of \$5,000 or more.

1           Now, the term "agent" means a person authorized to act  
2 on behalf of another person or a government. And the case of  
3 an organization or government, it includes a servant or  
4 employee and a partner, director, officer, manager, and  
5 representative.

6           And the first element that I read to you that the  
7 prosecution would have to prove states that Christopher Epps  
8 was an agent of the State of Mississippi as the commissioner of  
9 the Mississippi Department of Corrections. So, then, again,  
10 this term "agent" means a person authorized to act on behalf of  
11 in this case the Mississippi Department of Corrections. Do you  
12 understand that?

13           THE DEFENDANT: Yes, your Honor.

14           THE COURT: Then there's the term "government agency."  
15 That means a subdivision of the executive, legislative,  
16 judicial or other branch of government, including a department,  
17 independent establishment, commission, administration,  
18 authority, board and bureau and a corporation or other legal  
19 entity established and subject to control by a government or  
20 governance for the execution of a governmental or  
21 intergovernmental program.

22           Now, that's in the second element where the  
23 government -- where the prosecution would have to prove that  
24 the Mississippi Department of Corrections was an organization  
25 that is a governmental agency in the sense that it received the



1 requisite amount that would subject a violator to prosecution  
2 under Section 666(a)(2) and that this 666(a)(2) activates when  
3 such an entity receives in any one-year period benefits in  
4 excess of \$10,000 under a federal program involving a grant.  
5 Do you understand all that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: This offense, again, under the second  
8 element that the prosecution would have to prove could also  
9 involve a local government, and that would simply mean  
10 pertaining to a political subdivision between the state.

11 The other term is "state." Of course, we know what a  
12 state is. It is a state of the United States, the District of  
13 Columbia and any commonwealth, territory or possession of the  
14 United States. Of course, we recognize that the state here is  
15 Mississippi.

16 The term "in any one-year period" means a continuous  
17 period that commences no earlier than 12 months before the  
18 commission of the offense or that ends no later than 12 months  
19 after the commission of the offense. Such period may include  
20 time both before and after the commission of the offense. So  
21 this term "in any one-year period" connotes what I have just  
22 stated. Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: An act is corruptly done if it is done  
25 intentionally and with an unlawful purpose.

1           And the third element that the prosecution would have  
2     to prove -- the third element is that you corruptly gave with  
3     the intent to influence money or reward in connection -- well,  
4     let me back up off that.

5           The third element is that you corruptly gave with the  
6     intent to influence Christopher Epps in connection with any  
7     business transaction of the Mississippi Department of  
8     Corrections -- of Corruptions -- excuse me -- Corrections. The  
9     term I want to focus on here is "corruptly." And "corruptly"  
10    has a specific definition here. "Corruptly" means that the act  
11    was done intentionally and with an unlawful purpose. Do you  
12    understand then how "corruptly" is used here?

13           THE DEFENDANT: Yes, your Honor.

14           THE COURT: The term "value" means the face, par,  
15    market value or cost price, either wholesale or retail,  
16    whichever is greater.

17           Now, with regard to conduct, it is not necessary for  
18    the prosecution to prove that your conduct directly affected  
19    the federal funds received by the agency under the federal  
20    program. There must, however, be some connection between the  
21    criminal conduct and the organization. In this case there must  
22    be some connection between the criminal conduct and the agency  
23    involved receiving federal assistance.

24           In determining whether you are guilty of this offense,  
25    the jury should not consider bona fide salary, wages, fees, or

1 other compensation paid or expenses paid or reimbursed in the  
2 usual course of business. So then this matter has to concern  
3 something other than those factors I just discussed. Do you  
4 understand all of that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you have any questions at all as to  
7 what the government would have to prove with regard to this  
8 charge against you?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Counsel?

11 MR. LaMARCA: Your Honor, if it please the court, with  
12 regard to element three --

13 THE COURT: Right.

14 MR. LaMARCA: -- it reads -- or should be that the  
15 defendant corruptly gave anything of value to any person with  
16 the intent to influence in this case Christopher Epps in  
17 connection.

18 THE COURT: Okay. I think I missed that. So I'll go  
19 back over that. Thank you.

20 MR. LaMARCA: Yes, sir.

21 THE COURT: The element three, I want to go back over  
22 it again; and in going back over element three, I will first  
23 start back with the first element.

24 The prosecution has to prove that Christopher Epps was  
25 an agent of the State of Mississippi as the commissioner of the

1 Mississippi Department of Corrections. Secondly, that the  
2 Mississippi Department of Corrections was an organization that  
3 received in any one-year period benefits in excess of \$10,000  
4 under a federal program involving a grant.

5 Then we come back to the third element, that you  
6 corruptly gave anything of value to any person -- and here  
7 Christopher Epps is the one who is the subject of this -- with  
8 the intent to influence or reward Christopher Epps. So you  
9 could give it either directly to him or give it to anyone else  
10 to be given to him in order to influence him in connection with  
11 any business or transaction or series of transactions of the  
12 Mississippi Department of Corrections.

13 And, fourthly, that the business transaction or series  
14 of transactions involved anything of value of \$5,000 or more.  
15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Let me turn back to the prosecution. Are  
18 you satisfied?

19 MR. LaMARCA: Yes, your Honor.

20 THE COURT: Thank you.

21 (OFF-RECORD DISCUSSION WITH COURTROOM DEPUTY CLERK)

22 THE COURT: We'll take a recess for about 15 minutes.

23 (RECESS)

24 THE COURT: You may be seated. Now, I had just  
25 finished asking you and explaining to you -- well, asking you

1 about the criminal information and your understanding of it and  
2 then explaining to you the elements that the government would  
3 have to prove if this case were set for a trial.

4 Now I'll go into the penalty provisions. Do you  
5 understand that the maximum penalty is not more than ten years  
6 imprisonment and a fine of \$250,000?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Do you further understand that this  
9 penalty under this section carries a term of supervised release  
10 of not more than three years?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you know what supervised release is?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Supervised release occurs when an  
15 individual is placed under the jurisdiction of the United  
16 States Probation Office, and then that office supervises the  
17 individual based upon what the court instructs the probation  
18 office to enforce.

19 So then the probation office will require the releasee  
20 to comply with conditions, terms and restrictions imposed  
21 through the United States Probation Office -- imposed by the  
22 court through the United States Probation Office. Any  
23 violation of those terms could result in the individual being  
24 brought back before the court and with the court then exacting  
25 some penalty for failure to comply with those terms. Do you

1 understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And you should have to undergo this fate,  
4 which I certainly hope it would not happen, do you understand  
5 that the court could order additional incarceration, additional  
6 fine, additional punishment that would comport with the law,  
7 but it would be the court's discretion how the court would  
8 punish a transgressor who has been brought back before the  
9 court under this circumstance? Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Any questions about that?

12 THE DEFENDANT: No, sir.

13 THE COURT: Do you further understand that you'd have  
14 to pay a special assessment fee of \$100 which is ordered by  
15 Congress and this is mandatory? Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Now, do you have any questions at all  
18 about the penalty the court could exact upon you?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Then, finally, there's this matter of  
21 forfeiture. Now, there's a forfeiture provision as part of  
22 your criminal information. And do you understand that if you  
23 elected to go to trial then that would be adjudicated by a  
24 trier of fact also? But, otherwise, if you are entering a plea  
25 of guilty and if you have negotiated some forfeiture with the

1 government, then I would view the terms and see if I approved.  
2 Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Then there's the matter of restitution  
5 that any defendant convicted of a crime where Congress has  
6 determined that the individual should be subjected to the  
7 penalty of restitution, that you would have to undergo that  
8 should the court so order it. Restitution occurs where the  
9 court would require you to pay back the victim of the offense.  
10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Let me turn to the prosecution. Is there  
13 a matter of restitution here?

14 MR. LaMARCA: Your Honor, any matter of restitution  
15 will be left to the court, to the discretion of the court.  
16 There's been no agreement with restitution with the defendant,  
17 your Honor.

18 THE COURT: Does the government intend to pursue  
19 restitution?

20 MR. LaMARCA: We -- we will evaluate that. We --  
21 there may be some restitution that's in order. But that will  
22 be -- those figures we do not have or would be in a position to  
23 present to the court at this time, but we will consider that.

24 THE COURT: All right. Now, Mr. Waggoner, do you  
25 understand what he just said?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: At present they have not advised you of  
3 what matters, if any, they may make the subject of restitution.  
4 But between now and sentencing, they will make their  
5 determination and then file the requisite papers. Do you  
6 understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Let me turn back to the prosecution.

9 MR. LaMARCA: Yes, your Honor.

10 THE COURT: I've looked at the forfeiture provision in  
11 the criminal information. Are there any other forfeitures that  
12 the government would pursue here other than the forfeiture item  
13 that's listed in the criminal information? For instance, would  
14 the government claim that any assets owned by the defendant are  
15 matters that should be subject to forfeiture?

16 MR. LaMARCA: Your Honor, the government at this --  
17 pursuant to our agreement and pursuant to the information, is  
18 only proceeding for a money judgment through the agreement of  
19 the defendant and will not be pursuing any forfeiture of an  
20 asset except as possibly substitute assets for the money  
21 judgment.

22 THE COURT: Now, I do not know how much money the  
23 government claims is involved in this entire matter --

24 MR. LaMARCA: The --

25 THE COURT: -- but --



1 MR. LaMARCA: I'm sorry.

2 THE COURT: Let me just finish this, then. I do not  
3 know how much money the government contends is involved in this  
4 entire matter. If that sum of money exceeds \$200,000, would  
5 the government be seeking restitution beyond \$200,000?

6 MR. LaMARCA: We do not anticipate to seek -- as far  
7 as the money judgment is concerned and anything in excess of  
8 that as a forfeiture, we do not intend to seek anything more  
9 than what we are agreeing to as far as a money judgment of  
10 \$200,000.

11 When it comes to restitution, it is not under the  
12 Mandatory Victims Restitution Act, but it's under the Victims  
13 and Witness -- did I state it correctly -- yeah, Victim and  
14 Witness Restitution that is discretionary with the court.  
15 There may be some items that -- or some entities that would be  
16 entitled to restitution. Again, that would be discretionary  
17 with the court. It's not mandatory in this case.

18 THE COURT: All right. Thank you. Mr. Waggoner, did  
19 you understand what he said?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: So then, essentially, the U.S. Attorney's  
22 Office is reserving the right to file whatever papers that the  
23 U.S. Attorney's Office is authorized under the law to do, and  
24 between now and sentencing the U.S. Attorney's Office will file  
25 that matter and then we'll proceed on any such papers. All

1 right?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: All right. Now, has anyone threatened you  
4 or coerced you or forced you to come here today to enter a plea  
5 of guilty?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Would you be entering a plea of guilty  
8 voluntarily and of own free will?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Let me turn to the prosecution. Is there  
11 a plea agreement here?

12 MR. LaMARCA: There is, your Honor.

13 THE COURT: All right. Recite the pertinent elements  
14 of such.

15 MR. LaMARCA: Your Honor, the defendant has agreed to  
16 plead guilty to the information -- waived proceeding by  
17 indictment and has agreed to, as I say, proceed by information,  
18 willing to plead guilty to that information, also willing to  
19 enter an agreed preliminary order of forfeiture for a money  
20 judgment of \$200,000.

21 In exchange for that and those recommendations that  
22 are contained in the plea supplement, the government will  
23 proceed strictly on the information in exchange for that and  
24 the government's concession in that regard. The defendant has  
25 agreed to waive his right to appeal the conviction or the

1 sentence imposed in this case or the manner in which the  
2 sentenced is imposed on any ground whatsoever.

3 He's agreed waive the right to contest the conviction  
4 and sentence or the manner in which the sentence is imposed in  
5 any postconviction proceeding, including, but not limited to,  
6 one brought under Title 28, United States Code, Section 2255,  
7 and any other type of proceeding that may be claiming double  
8 jeopardy or excessive penalty as a result of any forfeiture  
9 ordered or to be ordered; also the right to seek attorney's  
10 fees or costs under the Hyde Amendment; also the right, whether  
11 asserted directly or by a representative, to request or receive  
12 information about this case or records of the United States or  
13 the investigating agency about the prosecution of this case,  
14 including without limitation anything sought by the defendant  
15 or his representative under the Freedom of Information Act or  
16 the Privacy Act.

17 Finally, the defendant pursuant to the plea agreement  
18 acknowledges and agrees that factual issues regarding  
19 sentencing will be resolved by the court and by a preponderance  
20 of the evidence standard and waives any right to a jury  
21 determination of these sentencing issues if one exists.

22 And the defendant also further agrees that in making  
23 its sentencing decision, the court may consider relevant  
24 evidence without regard to its admissibility under the rules of  
25 evidence that would normally be applicable at trial. The

1 defendant has expressly waived those rights, but does reserve  
2 the right to raise ineffective assistance of counsel claims in  
3 any future proceeding.

4 With that being said, those are the major terms of the  
5 plea agreement -- or just some of the terms of the plea  
6 agreement, without going into detail as to each and every term.

7 THE COURT: All right. Thank you. Now, Mr. Waggoner,  
8 did you read this agreement?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: And is it, in fact, an agreement between  
11 you and the prosecution?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Before entering into that agreement did  
14 you discuss it thoroughly with your lawyer?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And are you satisfied that your lawyer has  
17 answered all your questions concerning this document?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you have any questions that you'd like  
20 to pose to me about that document?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: Now, ordinarily, a defendant has a right  
23 to appeal his conviction and sentence to the next higher court.  
24 Now, under this agreement, do you understand that you are  
25 waiving that right?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: So that means then that once this court  
3 announces its decision on sentencing that you would not have  
4 the usual resource a defendant has to appeal that sentence or  
5 conviction or both to the next higher court. Do you understand  
6 that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Do you further understand that after you  
9 are sentenced and should you desire to file a habeas corpus --  
10 you've heard of that before?

11 THE DEFENDANT: I have, your Honor.

12 THE COURT: Habeas corpus?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Where one would attack the imposition of a  
15 sentence by some court? Do you understand that this document  
16 would preclude that, would prevent you from filing any habeas  
17 corpus in any court?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you further understand that this court  
20 in sentencing you may consider all relevant evidence, that I  
21 would make a decision whether any evidence submitted by the  
22 prosecution is relevant to sentencing; and then if I determine  
23 that it's relevant, I do not have to make a finding that it's  
24 relevant by proof beyond a reasonable doubt, but, instead, I  
25 can determine that it's relevant under the standard of

1 preponderance of the evidence, which is a civil standard which  
2 merely means that the court is persuaded that by the greater  
3 weight of the evidence that something should or should not be  
4 done? Do you understand all of that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: So then with regard to this relevant  
7 evidence, that the court first would look at the sentencing  
8 guidelines. Now, have you heard something about the sentencing  
9 guidelines?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Have you looked at them to see how they  
12 might apply to you in this litigation?

13 THE DEFENDANT: Not thoroughly.

14 THE COURT: All right. But do you have a thumbnail  
15 sketch about how they work?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And you recognize then that under the  
18 guidelines the court would look at the subject offense. Here  
19 in your case it's bribery. Do you recognize that bribery would  
20 carry a certain number of points? And then the court will look  
21 at any aggravating features of the crime that are recognized by  
22 the guidelines. And if the court identifies any, the court  
23 will look to see how many points should be added to the basic  
24 bribery guideline. Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

1           THE COURT: And then the court will do the same with  
2 any other matters that come before it that are deemed to be  
3 aggravating circumstances. If the court finds an aggravating  
4 circumstance, the court will then determine what should be the  
5 requisite amount or number of points that should increase that  
6 basic point or basic load for bribery. Do you understand that?

7           THE DEFENDANT: Yes, your Honor.

8           THE COURT: The court will also look at your criminal  
9 history and see if you fall in criminal history category I, II,  
10 III, IV, V or VI. And whether you fall within a certain  
11 category depends upon whether you have been convicted before  
12 and whether you have been convicted more than one time. The  
13 lowest level is a I. The highest level is a VI. And the court  
14 will look at that to determine what your criminal history is.  
15 Do you understand that?

16          THE DEFENDANT: Yes, your Honor.

17          THE COURT: So then the court will take this criminal  
18 history score as well as the points that I just mentioned  
19 earlier and then look at those two items to determine what the  
20 guideline range should be. Do you understand that?

21          THE DEFENDANT: Yes, your Honor.

22          THE COURT: But the court doesn't stop there. The  
23 court also has to look at any mitigating circumstances.  
24 Remember when I talked to you about aggravating circumstances?  
25 Well, the court also can look at mitigating circumstances.

1           Now, the most prominent mitigating circumstance is  
2       where a defendant undertakes to enter a plea of guilty. And  
3       then for acknowledging his guilt, the defendant may earn from  
4       that one point, two points or three points, depending upon the  
5       court's discretion. Do you understand that?

6           THE DEFENDANT: Yes, your Honor.

7           THE COURT: And should the court determine that there  
8       are mitigating points, then the court subtracts those  
9       mitigating points from the total of points I talked about  
10      earlier. Do you understand that?

11          THE DEFENDANT: Yes, your Honor.

12          THE COURT: Then the court goes back to the criminal  
13      history score, and the points total plus the criminal history  
14      category will lead the court to a table of punishment. And the  
15      court then will determine what the appropriate sentence should  
16      be based upon that table of punishment which will set out the  
17      lowest number of months the court should impose based upon the  
18      highest number of points the court should impose. Do you  
19      understand that?

20          THE DEFENDANT: Yes, your Honor.

21          THE COURT: But do you understand that all of that is  
22      discretionary? First of all, the court has to make certain  
23      determinations with regard to those points. And you will be  
24      privy to that because your attorney will be involved all along  
25      the way and so will you with regard to those calculations.



1 They will be submitted to you by the probation officer.

2 And then when it comes to the sentencing range, then  
3 we can all look at the table of punishment and determine what  
4 the guideline range is. And the court has discretion within  
5 that guideline range to sentence either at the lowest number of  
6 months or the highest number of months. Do you understand all  
7 that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Now, the court also has the discretion to  
10 consider whether to upward depart above the highest number of  
11 months prescribed by the guidelines -- the guideline act,  
12 sentencing act. Do you understand that?

13 THE DEFENDANT: Now I do, yes, sir, your Honor.

14 THE COURT: So suppose then that the sentencing  
15 guidelines after the calculations we've been discussing  
16 prescribe a minimum of A and a maximum of B. The court can go  
17 to C if the court is convinced that the guidelines do not fully  
18 describe the offense or that there are other factors that ought  
19 to be taken into account, and then the court can go above that  
20 top guideline of B and go to C or D. Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: In making that determination whether to go  
23 above the guidelines, the court may take into account something  
24 called relevant conduct. Now, you heard the prosecutor mention  
25 that with regard to relevant conduct, should the court inquire

1 under this category, the court's determination will be met by  
2 preponderance of the evidence, not by proof beyond a reasonable  
3 doubt. Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: So then should the court decide that there  
6 are other matters germane to your conduct that the court ought  
7 to consider, ought to consider, under this banner of relevant  
8 conduct, do you understand the court, first of all, will  
9 identify the conduct, second of all, determine by a  
10 preponderance of the evidence whether it impacts or should  
11 impact upon sentencing here? And then the court if it makes  
12 the determination will allow, of course, you through your  
13 attorney to make your objections to any use of the relevant  
14 conduct.

15 But if I overrule the objection and decide to utilize  
16 this relevant conduct, whatever it might be, then I can use  
17 that to increase your score. And then as I was telling you  
18 earlier, if the guidelines prescribed a range of A to B, then  
19 the relevant conduct might persuade me to go to C or D. Do you  
20 understand now?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And I can do that. But in doing that, I  
23 must put on the record why I have determined to do that, why  
24 that relevant conduct has persuaded me to go above the  
25 guidelines. Do you understand that?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Now, so far we've been talking about an  
3 upward departure. That is when I go above the guidelines. And  
4 do you understand that I can also go below the guidelines?

5 Now, I can go below the guidelines if I am determined  
6 that there is something about this crime or something about you  
7 that should be taken into consideration which has not been  
8 taken into consideration under these sentencing guidelines.  
9 And if I were to make that determination, then I can go below  
10 A, which is I told you before the lowest number of months under  
11 the guidelines I could impose as a sentence. Then the court  
12 could go below A. Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Now, what I've been discussing with you so  
15 far all deals with the sentencing guidelines. Now, the  
16 sentencing guidelines are based on this point system, and the  
17 sentencing guidelines rarely prescribe a punishment  
18 commensurate with the maximum sentence that the statute  
19 provides. There are some circumstances where it might.

20 Now, the maximum sentence the court can impose here,  
21 as you remember, is 10 -- not more than 10 years imprisonment  
22 and a fine of \$250,000. Do you remember that?

23 THE DEFENDANT: Yes, sir. Yes, your Honor.

24 THE COURT: Now, I've just discussed with you the  
25 court's approach when utilizing the sentencing guidelines. The

1 court is not required to apply the sentencing guidelines. If I  
2 choose, I may apply the constricts of the statute. So if I  
3 decide to sentence you under the statute and not under the  
4 guidelines, first of all, I would provide notice to you and  
5 your attorney so that you all are prepared for that  
6 possibility.

7 Next, if I decide to proceed under the statute, I will  
8 place on the record my reasons for not proceeding under the  
9 guidelines. And then, finally, with regard to the statute, the  
10 court may sentence you to any sentence authorized by statute.  
11 So I could sentence you up to the maximum as provided by law.  
12 Now, do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Any questions about that at all?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: And, of course, if I resort to the  
17 statute, I will consider any and all information just as I  
18 would on the sentencing guidelines that pertains to you and  
19 pertains to the offense. Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: The only difference is is that when we go  
22 into the statute the court is expressly disclaiming that it  
23 will -- well, it's -- the court is expressly proclaiming then  
24 that it will use the statute instead of the guidelines for  
25 whatever reasons the court enunciates. Do you understand that

1 now?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Any questions whatsoever about that?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: Now, we've been talking then about the  
6 plea agreement that you have with the prosecution. Did you  
7 sign this agreement?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And when did you sign it?

10 (EXAMINED DOCUMENT)

11 THE DEFENDANT: 7/15.

12 THE COURT: All right. July 15th is when you signed  
13 the document? 7/15? Okay. Was it July 15 then? Okay. So  
14 July 15, 20 -- no, excuse me. July 15, 2015, is when you  
15 signed the document.

16 MR. BAIN: Yes, your Honor.

17 THE DEFENDANT: Yes.

18 THE COURT: All right. And, counsel, when did you  
19 sign it?

20 MR. BAIN: 7/10/15, your Honor.

21 THE COURT: 7/10/15.

22 MR. BAIN: The difference in that was just logistics  
23 with me being out of Corinth, Mississippi, and him being down  
24 here, just getting that to him -- explaining it to him and then  
25 getting it to him.

1 THE COURT: All right. So you signed it on the 10th  
2 of July.

3 MR. BAIN: Yes, your Honor.

4 THE COURT: And he signed it on the 15th of July.

5 MR. BAIN: Yes, sir.

6 THE COURT: Now, counsel, are you satisfied that your  
7 client understands this agreement?

8 MR. BAIN: Yes, sir, very satisfied.

9 THE COURT: And, Mr. Waggoner, again, did you read  
10 every word of this agreement?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: And are you satisfied you understand each  
13 and every word of this agreement?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you have any questions whatsoever about  
16 this agreement?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: If so, then I'm willing to answer those  
19 questions for you. So think again. Are there any questions  
20 whatsoever you have about the force of this agreement? Look  
21 through it one more time and then tell me if you have any  
22 matters about which you wish to inquire.

23 (EXAMINED DOCUMENT)

24 THE DEFENDANT: No, your Honor.

25 THE COURT: All right. Now I turn to the prosecution.

1 And when did you sign this agreement?

2 MR. LaMARCA: I signed it today, your Honor.

3 THE COURT: All right. Thank you.

4 MR. LaMARCA: Yes, sir.

5 THE COURT: Now, let's talk about the plea supplement.

6 Do you have that in front of you, Mr. Waggoner?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Did you read it?

9 THE DEFENDANT: Yes, sir. Yes. Yes, sir.

10 THE COURT: Each and every page? And did you discuss  
11 it with your lawyer?

12 THE DEFENDANT: I didn't understand it all, but  
13 that's -- I did -- we did.

14 THE COURT: Do you understand it now?

15 THE DEFENDANT: Yes, sir, as much as I can.

16 THE COURT: Well, let's be sure. Take your time and  
17 look through it.

18 THE DEFENDANT: Okay.

19 THE COURT: And take your time. Would you like to sit  
20 down while you do it? Why don't you take a seat.

21 THE DEFENDANT: I understand it.

22 THE COURT: No. Why don't you take a seat. Have a  
23 seat.

24 (COMPLIED WITH REQUEST)

25 THE COURT: Now, Mr. Waggoner, you've had a chance to

1 sit at counsel table with your lawyer and go over the document?  
2 Have you had enough time to do that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Would you like any more time?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Now, then, I asked you about the plea  
7 supplement. Do you understand it now?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Each and every paragraph.

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Any questions whatsoever about that  
12 document?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: And when did you sign it?

15 THE DEFENDANT: 7/15.

16 THE COURT: All right. Of 2015.

17 THE DEFENDANT: 2015.

18 THE COURT: All right. And let me turn to Mr. Bain.  
19 Mr. Bain, when did you sign it?

20 MR. BAIN: Yes, your Honor, same, July 10th -- well,  
21 your Honor, I guess we're -- oh, that's the first one. That's  
22 right. We re-executed one this morning. So we all signed it.  
23 He signed it this morning as well as I.

24 THE COURT: You say re-executed one?

25 MR. BAIN: Yes, your Honor.



1 THE COURT: All right. Is this one that -- is this  
2 one identical to the one he previously signed?

3 MR. BAIN: It is. There was something that we had to  
4 iron out. We've ironed that out in the interim, and he's --  
5 it's identical, your Honor.

6 THE COURT: Okay. Do you have both documents there?

7 MR. BAIN: I do, your Honor.

8 THE COURT: Okay. Let me have it.

9 (DOCUMENTS TENDERED TO THE COURT)

10 THE COURT: Mr. Waggoner, I have compared the document  
11 you signed back on July 15, 2015, to the document you signed on  
12 August 21, 2015. I see some differences. Now, are you aware  
13 that the two documents are different?

14 (COUNSEL AND DEFENDANT CONFERRED)

15 THE DEFENDANT: Yeah. I know what was -- yes, sir. I  
16 do know the difference. I think it was about a money amount.  
17 Is that correct?

18 THE COURT: Well, there are some other differences  
19 here. For instance, there's a page that's inserted on -- in  
20 the document that you signed today that was not in the document  
21 that you signed on July 15. That's page four.

22 Counsel, write this down, page four.

23 Then on page five there's a reference to money  
24 judgment that was erased in the preceding document. That's on  
25 page five. Then on page six, that's a page that's inserted

1 there that is not present on the original document you signed  
2 on July 10, 2015.

3 Now, counsel, I'm going to give back this document to  
4 you so that you can be sure that your client has paid attention  
5 to these differences. Now, before you get this document, let  
6 me ask this other question here, or two, that at the end of  
7 this document, Mr. Waggoner, as well as at the conclusion of  
8 the plea bargain -- memorandum of understanding are some  
9 declarations, and the declarations read as follow in both  
10 documents.

11 Defendant and defendant's attorney of record declare  
12 that the terms of this plea agreement have been, one, read by  
13 or to defendant; two, explained to defendant by defendant's  
14 attorney; three, understood by defendant; four, voluntarily  
15 accepted by defendant; and, five, agreed to and accepted by  
16 defendant. Now, do you see those declarations?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And do you agree with those declarations?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: In both documents.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And, counsel, Mr. Bain, do you agree with  
23 those declarations?

24 MR. BAIN: Yes, your Honor.

25 THE COURT: In both documents.

1 MR. BAIN: Yes, your Honor.

2 THE COURT: Now, I'm going to give you back the  
3 8/21/15 plea supplement, and then I want you to go over those  
4 places that I mentioned that are different from the first  
5 document he signed so you can see the difference.

6 Twana.

7 (DOCUMENT TENDERED TO COURTROOM DEPUTY CLERK)

8 THE COURT: You all can sit down and -- I tell you  
9 what, why don't you all go to the jury room outside so you can  
10 have some privacy. I'll sit here and wait. Just take your  
11 time.

12 (COMPLIED WITH REQUEST)

13 THE COURT: Ready to resume?

14 MR. BAIN: Yes, your Honor.

15 THE COURT: Okay. Now, then, Mr. Bain, have you had  
16 enough -- have you had enough time to talk to your client about  
17 this matter?

18 MR. BAIN: Yes, your Honor, I have.

19 THE COURT: Why don't you put it on the record what  
20 the confusion is and what the solution is.

21 MR. BAIN: Your Honor, the first -- back up just a  
22 little bit. The first plea supplement that was given to us had  
23 an amount, the \$200,000 money judgment that we discussed  
24 earlier. At that point in time there was some confusion about  
25 that. Since then -- so when he signed the plea supplement,

1 scratched that out, and submitted it to the U.S. Attorney's  
2 Office. Since that time, he is comfortable with that amount as  
3 am I. And then we executed the new one today.

4 As far as what the court saw earlier was -- with pages  
5 that was inserted, that was just my copy for whatever reason  
6 did not have the complete supplement agreement that I had.  
7 Otherwise, they are identical.

8 THE COURT: All right. So then the document that he  
9 signed back on the 15th is identical to the plea supplement  
10 that he signed on the 21st.

11 MR. BAIN: Yes, sir.

12 THE COURT: All right. Mr. Waggoner, have you had a  
13 chance to compare those?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you satisfied that they are identical?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And with regard to those declarations that  
18 I asked you about earlier, you still adhere to those  
19 declarations -- those five declarations I read off?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: All right. Now, Mr. Bain, do you too?

22 MR. BAIN: Yes, sir, your Honor.

23 THE COURT: All right. Mr. LaMarca, this explanation  
24 about the plea supplement, are you in agreement with Mr. Bain's  
25 explanation about the seeming discrepancy that I mentioned

1 earlier?

2 MR. LaMARCA: I am, your Honor.

3 THE COURT: So, then, there really wasn't a  
4 discrepancy.

5 MR. LaMARCA: There was no discrepancy. They are  
6 complete, identical documents other than the scratching out  
7 that was on 7/15 that's no longer on 8/21.

8 THE COURT: All right. And that scratch-out was  
9 purely a scratch-out involving money.

10 MR. LaMARCA: The one phrase of the money judgment.  
11 Correct.

12 THE COURT: All right, then. I will accept the plea  
13 agreement and the plea supplement. May I have them, please.

14 MR. LaMARCA: Yes, your Honor.

15 (DOCUMENT TENDERED TO THE COURT)

16 THE COURT: I have two documents. One is a plea  
17 agreement between the United States and Mr. Sam Waggoner. On  
18 the first page it's dated May 6th, 2014 (sic). The first page  
19 is not numbered at the top nor at the bottom. Page two is  
20 numbered at the bottom. Page three is numbered at the bottom,  
21 as is page four, as is page five and also page six.

22 The document is in nine paragraphs. The last  
23 paragraph, the ninth paragraph, is styled, quote, Complete  
24 Agreement, unquote. And after that are the declarations that I  
25 read off earlier, the five declarations. Following that are

1 the signatures of the principals. I see "Darren J. LaMarca,"  
2 his signature, Assistant United States Attorney. The signature  
3 of Mr. Sam Waggoner follows, because he said he signed it.  
4 Mr. Waggoner, is this your signature?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And thereafter is the signature of  
7 Attorney Nick Bain. The signatures of -- well, let's see. All  
8 three were signed on different days. Mr. LaMarca signed his  
9 today. Mr. Waggoner signed his on the 15th of July. And  
10 Mr. Bain signed his on the 10th day of July.

11 And Mr. Bain has informed the court that he signed his  
12 on July 10 and thereafter sent this document to Mr. Waggoner  
13 which accounts for why there are different dates for Mr. Bain's  
14 signature and Mr. Waggoner's signature.

15 The next document is the plea supplement. It is dated  
16 on the front page May 6, 2015. It's neither numbered at the  
17 top nor bottom. This document is in paragraphs. The document  
18 is numbered at the bottom at page two, three, four, five, six  
19 and seven. At the bottom of page six is an "H" and at the top  
20 of page seven is an "I."

21 After that there are some declarations, the same ones  
22 I read off earlier. And following that are the same signatures  
23 of the parties except that Assistant United States Attorney  
24 Mr. LaMarca has affixed as the date 8/21/15. Mr. Waggoner has  
25 affixed as the date 8/21/15, as has Mr. Bain, the date of

1 8/21/15 signifying the date that he too signed this document.

2 I will make the plea agreement a part of the usual  
3 record, and I will make the plea supplement a part of the  
4 confidential record pursuant to the local rules of court.

5 Now, then, I turn to the factual basis for your plea,  
6 Mr. Waggoner. I told you back when I advised you of all your  
7 various rights that if you determine to enter a plea of guilty,  
8 that I will be required to satisfy myself that your plea meets  
9 the elements of the crime charged. And I have also advised you  
10 as to what those elements are.

11 So I will ask the prosecution to stand and tell me  
12 what constitutes a crime by your conduct, and that is a crime  
13 as charged by the criminal information. When Mr. LaMarca is  
14 going -- Mr. LaMarca or Mr. Gilbert? It's going to be  
15 Mr. Gilbert.

16 When Mr. Gilbert finishes, then I am going to ask you  
17 whether you agree with his statements. And then I'm going to  
18 go a bit further. I'm going to ask you to tell me in your own  
19 words what you did to make you guilty under this criminal  
20 information. All right. Mr. Gilbert.

21 MR. GILBERT: Your Honor, had this case gone to trial,  
22 the United States would have proven that at all times relevant  
23 to this information Christopher B. Epps was the commissioner of  
24 the Mississippi Department of Corrections, a state agency that  
25 received more than \$10,000 each calendar year in funding from a

1 federal grant or in relation to a federal program.

2 The evidence would show that on or about  
3 December 13th, 2005, Global Tel-Link, or GTL, was awarded a  
4 contract by the Mississippi Department of Information  
5 Technology Services on behalf of the Mississippi Department of  
6 Corrections to provide inmate phone services for multiple MDOC  
7 facilities, including Parchman, Central Mississippi  
8 Correctional Facility and South Mississippi Correctional  
9 Facility. The contract with GTL was renewed multiple times and  
10 was in effect throughout the time covered by this criminal  
11 information.

12 In 2011 the defendant, Sam Waggoner, became a paid  
13 consultant for GTL. Shortly after Waggoner became a consultant  
14 for GTL, Waggoner began paying Epps kickbacks from a portion of  
15 Waggoner's consulting salary from GTL. These kickbacks were  
16 paid by Waggoner in order to curry favor with Epps for the  
17 purpose of influencing Epps' decisions regarding GTL and its  
18 contract with MDOC.

19 The evidence would show that both Waggoner and Epps  
20 had a financial incentive to ensure that GTL receive as much  
21 money as possible from its MDOC contract. As compensation from  
22 GTL, Waggoner received 5 percent of GTL's monthly revenue from  
23 the MDOC contract.

24 Waggoner would withhold 30 percent of his monthly pay  
25 from GTL to cover his tax liability and he would give Epps half



1 of the remaining money from GTL as a kickback each month. At  
2 various times Waggoner paid Epps as much as \$3,400 a month.  
3 Waggoner made these cash payments to Epps at various locations,  
4 including at Epps' home in Flowood, Mississippi.

5 Waggoner's total income from GTL as its consultant was  
6 in excess of the \$5,000 threshold requirement for Title 18,  
7 United States Code, Section 666.

8 Evidence in the form of wiretapped conversations  
9 between Epps and Waggoner would show that during the time  
10 period Waggoner was paying Epps, Waggoner routinely discussed  
11 with Epps the need to expand the telecommunication services GTL  
12 was providing to MDOC.

13 For example, Waggoner lobbied Epps to allow GTL to  
14 provide video visitation and communication services between  
15 inmates and their visitors. This service would have allowed  
16 friends and family members to visit with inmates over  
17 Internet-based video feeds instead of requiring travel to the  
18 respective prisons where the inmates were housed.

19 This service like the traditional phone service  
20 already provided by GTL would have been offered to inmates and  
21 to their friends and families at a cost, potentially increasing  
22 the monthly revenue of GTL which would have in turn increased  
23 the monthly pay of Waggoner and the monthly kickback he was  
24 paying to Epps.

25 Waggoner explained to Epps that he believed the video

1 services would increase the amount of money Waggoner and Epps  
2 received each month. Epps and Waggoner discussed justifying  
3 this new service as a way to decrease the instances of the  
4 introduction of contraband into MDOC facilities.

5 The evidence would show at least three specific  
6 instances of Waggoner paying a cash bribe or kickback to Epps.  
7 These occasions were sometime in or about April of 2014  
8 Waggoner met Epps at a hotel in Natchez where Waggoner  
9 delivered a bottle of Jack Daniels and about \$2,400 in cash to  
10 Epps from the money Waggoner was paid by GTL.

11 On or about July 30th, 2014, and again on or about  
12 August 26 of 2014 Waggoner paid Epps cash kickbacks from the  
13 money Waggoner was paid by GTL. The evidence would show that  
14 these events and circumstances occurred in whole or in part  
15 within the Southern District of Mississippi.

16 THE COURT: Mr. Waggoner, did you hear what  
17 Mr. Gilbert had to say?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you disagree with anything that he  
20 said?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: So, Mr. Waggoner, let me now have you  
23 express in your own words why you are guilty of the offense  
24 that's charged in the criminal information. How well did you  
25 know Christopher Epps?

1 THE DEFENDANT: What was the question about Epps?

2 THE COURT: How well did you know him?

3 THE DEFENDANT: I saw him once a month. We didn't go  
4 out to dinner or anything like that. I knew him. I've known  
5 him a long time, 20 years probably, since he's been with the  
6 DOC.

7 THE COURT: And did you ever work for MDOC?

8 THE DEFENDANT: No. No, your Honor.

9 THE COURT: So how did you come to know Mr. Epps?

10 THE DEFENDANT: I guess associations, sir, different  
11 meetings, state meetings, sheriffs' meetings, national  
12 meetings.

13 THE COURT: Did you know him when you held public  
14 office?

15 THE DEFENDANT: That wasn't me.

16 THE COURT: Okay.

17 THE DEFENDANT: That was my cousin.

18 THE COURT: Okay. Well, let me ask you then, did you  
19 know him when your cousin held public office?

20 THE DEFENDANT: Do I know him?

21 THE COURT: Did you know him then?

22 THE DEFENDANT: Sam W. Waggoner?

23 THE COURT: No, no. Did you know Mr. Epps during that  
24 time period?

25 THE DEFENDANT: Yes. Yes, your Honor.

1 THE COURT: And when you were working for GTL, what  
2 was your position with GTL?

3 THE DEFENDANT: Liaison between the Mississippi  
4 Department of Corrections.

5 THE COURT: And how long did you work for GTL?

6 THE DEFENDANT: I've worked with them around 20 years,  
7 23 years probably. I did until last year.

8 THE COURT: All right. And who set up this financial  
9 arrangement you had with GTL to be paid 5 percent of contract  
10 price?

11 THE DEFENDANT: Robert Orso with GTL and the  
12 department of corrections. He's the regional manager.

13 THE COURT: All right. And with regard to this scheme  
14 with Christopher Epps, was it your idea or his idea?

15 THE DEFENDANT: It was his idea, sir.

16 THE COURT: And who made the determination as to how  
17 much or what percentage he would get out of the deal?

18 THE DEFENDANT: A mutual agreement I guess it was.

19 THE COURT: All right. And how exactly did it work  
20 for you to be able to get that money?

21 THE DEFENDANT: I would get a check from GTL and I  
22 would take the 30 percent and then half that and then give the  
23 other half to Mr. Epps.

24 THE COURT: And this 30 percent would be applied  
25 against what?

1 THE DEFENDANT: For taxes, reduction for taxes. I had  
2 to pay taxes.

3 THE COURT: GTL would give you that money?

4 THE DEFENDANT: Tax money?

5 THE COURT: Who would give you the sum of money that  
6 you would utilize to pass on to Epps?

7 THE DEFENDANT: GTL would give me a 5 percent  
8 commission each month.

9 THE COURT: And would you take part of that money and  
10 give to Mr. Epps?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And how did you ensure that you would have  
13 moneys over and beyond that which you normally should get?  
14 What I'm asking is is that the contract prices you had with the  
15 department of corrections, who negotiated that contract price?

16 THE DEFENDANT: The actual GTL contract with the  
17 department of corrections?

18 THE COURT: That's right.

19 THE DEFENDANT: I think it was three or four agencies  
20 within the department of corrections and they put it out for  
21 bid.

22 THE COURT: And was the bid a lawful bid?

23 THE DEFENDANT: GTL's the largest inmate telephone  
24 company in the United States. So I'm sure it was. I didn't  
25 see that. I wasn't involved in it.

1 THE COURT: I need you to explain why you had to bribe  
2 Christopher Epps on this matter.

3 THE DEFENDANT: He wanted some of the money; and if I  
4 didn't do it, I would lose some of my contracts and business in  
5 my major business.

6 THE COURT: So what you're telling me then is that the  
7 bid that GTL made for the business was a legitimate deal.

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: You're telling me then that the profits  
10 derived were legitimate profits.

11 THE DEFENDANT: Legitimate profits.

12 THE COURT: And you're telling me that the amount of  
13 money that was paid to you on commission --

14 THE DEFENDANT: Yes, sir.

15 THE COURT: -- was a legitimate amount of money.

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: But you're telling me that unless you paid  
18 part of your commission to Christopher Epps, that he threatened  
19 to do something else.

20 THE DEFENDANT: I take full responsibility for what I  
21 did. I don't know what his thinking was.

22 THE COURT: All right. But at the time that you paid  
23 him you paid him under what impression? Did you pay him under  
24 threat or just voluntarily give him the money?

25 THE DEFENDANT: My main business was CCI, and I did

1 business with the county, city jails in Mississippi. And if  
2 something would come up, they need -- a sheriff might ask me  
3 for -- talk to Mr. Epps when I see him, for a cook in their  
4 jail or a mechanic, and I would do that for the counties,  
5 cities, and he would try to help.

6 THE COURT: I still don't fully understand. Why would  
7 you need to bribe him if you had this money coming to you  
8 lawfully?

9 THE DEFENDANT: I did.

10 THE COURT: So then why would you need to bribe him?

11 THE DEFENDANT: He -- he told me to. He -- he said he  
12 wanted half of my commission each month. But, again, I do take  
13 responsibility --

14 THE COURT: I understand.

15 THE DEFENDANT: -- of doing that.

16 THE COURT: But why would you pay him? What would  
17 happen if you didn't pay him?

18 THE DEFENDANT: He would call a sheriff, say Leake  
19 County Sheriff Waggoner, *Sheriff Waggoner, I want you to change*  
20 *inmate phone companies or I will pull my state inmates out.*  
21 And that was the main reason, something like that would happen.

22 THE COURT: Well, did you have conversations directly  
23 with him whereby he made such demands or threats?

24 THE DEFENDANT: No. No, your Honor. I'd just -- I'd  
25 seen what he had done to other people that said no.

1 THE COURT: All right. So then you're saying that he  
2 told you how much money he wanted.

3 THE DEFENDANT: He said he wanted to split it. And  
4 then I told him I was going to take taxes out and then split  
5 that in half. And we decided on that together.

6 THE COURT: Well, then was your commission still  
7 profitable for you after you did that, after you split it?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: So what was your commission per year from  
10 this engagement?

11 THE DEFENDANT: 108,000 -- 106,000 a year I think.

12 THE COURT: So, now, were you splitting 106 or were  
13 you splitting 212? How did it work?

14 THE DEFENDANT: 106 minus -- times 30 percent and  
15 subtract it by -- divide it by two.

16 THE COURT: Okay. Do that again. 100 and what now?

17 THE DEFENDANT: \$106,000.

18 THE COURT: 106. Okay. Now what?

19 THE DEFENDANT: 30 percent for taxes.

20 THE COURT: 30 percent of that.

21 THE DEFENDANT: Then --

22 THE COURT: One second.

23 THE DEFENDANT: Yes, sir.

24 (PAUSE)

25 THE COURT: Okay. Taxes, what did you do with the



1 taxes? That would come off of that?

2 THE DEFENDANT: Yes. My accountant would do all that.

3 THE COURT: Okay. Then what?

4 THE DEFENDANT: Then we would divide the remainder by  
5 two.

6 THE COURT: Okay. After you subtract those taxes,  
7 then the rest would be divided by two.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. I come up with something north of  
10 \$35,000. That's about right? I just made some quick  
11 calculations.

12 (COUNSEL AND DEFENDANT CONFERRED)

13 THE DEFENDANT: It would be \$54,000.

14 THE COURT: 54,000?

15 THE DEFENDANT: 108 is what I've got on this sheet and  
16 we divided that.

17 THE COURT: You said 106. It's 108?

18 THE DEFENDANT: 108.

19 THE COURT: Okay.

20 THE DEFENDANT: For -- what year is this?

21 THE COURT: 108. We're talking about one year. Are  
22 we talking about one year?

23 THE DEFENDANT: Well, we -- we had this  
24 conversation -- I don't know how to answer that.

25 (COUNSEL AND DEFENDANT CONFERRED)

1 MR. BAIN: Your Honor, the numbers that he's presented  
2 to me, there's a total of 309,000 for a period of a little over  
3 three years. And I'd be more than happy to submit this to the  
4 court if you'd like to see his --

5 THE COURT: Well, over three years. You're saying in  
6 a three-year period --

7 MR. BAIN: \$309,582.

8 THE COURT: Okay. And then you took one third for  
9 taxes.

10 THE DEFENDANT: 30 percent.

11 THE COURT: 30 percent. All right.

12 THE DEFENDANT: I know what it is. They have -- the  
13 accountant included the CCI business along with this percentage  
14 for the consultant together, and so -- I just saw that, your  
15 Honor.

16 THE COURT: All right. So then at the end of the  
17 calculations, your take-home over these three years would have  
18 been about what?

19 THE DEFENDANT: It would have been the same thing,  
20 108,000.

21 THE COURT: For the three-year period?

22 THE DEFENDANT: Yes. But they're also including my  
23 other business, CCI, in it. So it would make the total larger.  
24 And I don't know how they came up with that. But I agree with  
25 whatever they say, though.

1 THE COURT: Over that three-year period, then about  
2 how much would Epps get?

3 THE DEFENDANT: He -- I did it all -- total was 300  
4 and -- 2011 it was 61,000 for -- that was not a full year. In  
5 '12 it was one hundred and five four hundred. In '13 it was  
6 one hundred and thirteen. In 2014 until August -- so that's  
7 three hundred and nine fifty-eight times 30. And so we had  
8 216,700 net.

9 THE COURT: For yourself.

10 THE DEFENDANT: Gross net and then divide by two, net,  
11 108,353.70.

12 THE COURT: So then Chris Epps over that three-year  
13 period would have gotten how much?

14 THE DEFENDANT: 108,353.70.

15 THE COURT: And what were you directed to do with his  
16 money besides -- I mean, give it to him, but how would you --  
17 how did you give it to him?

18 THE DEFENDANT: It would be cash, sir.

19 THE COURT: All right. And were you directed to put  
20 it in his hand or put it in any other form where he could pick  
21 it up? How were you delivering the money to him?

22 THE DEFENDANT: When I was at his house, I'd just put  
23 it on the counter by him. And then if we're having lunch, I  
24 would hand it to him.

25 THE COURT: All right. Did you have to have anybody

1 else involved in this scheme with you?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Okay. Thank you.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: So then when you gave him this money, you  
6 understood you were violating the law?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And when you discussed all these matters  
9 with your lawyer, are you satisfied that you have no defense to  
10 that conduct?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: So then with regard to the charge against  
13 you contained in the criminal information, how do you plead,  
14 guilty or not guilty?

15 THE DEFENDANT: Guilty, your Honor.

16 THE COURT: Mr. Waggoner, since you acknowledge  
17 you're, in fact, guilty as charged in the criminal information,  
18 since you know your rights to a trial, since you know what the  
19 maximum possible punishment is and since you are voluntarily  
20 pleading guilty, I will accept your plea of guilty as to the  
21 single count of the criminal information and I hereby enter a  
22 judgment of guilty against you as to that charge. Twana.

23 THE CLERK: November 5th.

24 THE COURT: November 5. I'm going to sentence you on  
25 November 5, 2015, here in this courtroom. That's November 5,

1 2015. 9:00, Twana, 9:30?

2 THE CLERK: 9:30.

3 THE COURT: At 9:30 a.m. here in this courtroom. Now,  
4 I'm going to base my sentence on information contained in the  
5 presentence report. This report will be very important to you,  
6 obviously. So, then, you have to review it thoroughly before  
7 you come back here for sentencing.

8 The probation officer will need to talk to you about a  
9 number of matters that will be included within the presentence  
10 investigation report. You should freely talk to the probation  
11 officer; but if the probation officer asks you to provide  
12 information on any matters that would incriminate you on any of  
13 the subjects, you have the right not to answer. Do you  
14 understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: You also have the right to have Mr. Bain,  
17 your attorney, present with you during the entire time of the  
18 interview, and you can then profit by his advice about these  
19 questions. Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Now, are you telling me that you're going  
22 to read each and every line in that presentence investigation  
23 report?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Now, be sure that you do, because I will.

1 And there might be some things in there that are unfavorable to  
2 you that shouldn't be in there.

3 Now, if there are such, then Mr. Bain is going to file  
4 a motion with the court asking the court to strike those  
5 matters but only after he has met with the probation officer  
6 and tried to resolve the matter informally. If he can't  
7 resolve it informally, then he can file a motion with the  
8 court. Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: And then I will rule on that before I  
11 sentence you. Do you understand that too?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: So you're telling me you're going to read  
14 this report thoroughly?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And then discuss it with your lawyer.

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Now, what is the defendant's liberty  
19 status?

20 MR. LaMARCA: Your Honor, the defendant is on an  
21 unsecured bond, your Honor.

22 THE COURT: And is there any objection to his  
23 remaining on an unsecured bond?

24 MR. LaMARCA: No objection.

25 THE COURT: And, Mr. Bain, I presume then you're

1 making such a request that your client be allowed to remain  
2 free on that unsecured bond.

3 MR. BAIN: Yes, your Honor.

4 THE COURT: Mr. Waggoner, I'm going to allow you to  
5 remain free under that same bond, under the same conditions and  
6 restrictions in that bond. If you violate any of those terms,  
7 then you'll be brought back here. Do you understand?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And at that time I would have to decide  
10 whether to incarcerate you between then and the time of  
11 sentencing. Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Furthermore, I have to be assured at this  
14 point that you're going to show up on the date that I just  
15 mentioned. Will you show up?

16 THE DEFENDANT: Early.

17 THE COURT: All right. And, next, that you are not  
18 going to commit any crimes whatsoever.

19 THE DEFENDANT: I swear to that.

20 THE COURT: All right, then. Now, you have been  
21 convicted of a felony. A person convicted of a felony cannot  
22 own or possess any kind of firearm. The person can't use a  
23 firearm for any reason, not for hunting, protection or even  
24 gun-collecting. So if you own or have possession of a firearm,  
25 from this point on you would be acting illegally. Do you

1 understand that?

2 THE DEFENDANT: I have some in my home now. How can I  
3 get them out? My friend here is going to take them.

4 THE COURT: Okay.

5 THE DEFENDANT: Can I do it today or tomorrow? What  
6 do you recommend?

7 THE COURT: He can do it as fast as possible  
8 because --

9 THE DEFENDANT: They're in Carthage.

10 THE COURT: Okay. From this point on you cannot own  
11 or possess --

12 THE DEFENDANT: Okay.

13 THE COURT: -- any firearms.

14 THE DEFENDANT: Okay.

15 THE COURT: And you cannot have constructive  
16 possession nor actual possession.

17 THE DEFENDANT: I understand.

18 THE COURT: Now, let me explain -- well, let me  
19 explain this definition of them to be sure.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Actual possession is where you have the  
22 firearm on your person, in your hand.

23 THE DEFENDANT: Okay.

24 THE COURT: Constructive possession is having an item  
25 such as a firearm in a place over which you have control from



1 which you may obtain the firearm.

2 THE DEFENDANT: All right.

3 THE COURT: So you can't have it in your house, any  
4 property you own, in your car, et cetera. You cannot have it  
5 in any place over which you have control from which you may  
6 readily obtain the firearm. Do you understand that?

7 THE DEFENDANT: Very well, sir.

8 THE COURT: Now, a firearm is a firearm whether it's  
9 loaded or not. Do you understand that?

10 THE DEFENDANT: What was that?

11 THE COURT: A firearm is a firearm no matter whether  
12 it is loaded or not.

13 THE DEFENDANT: Oh.

14 THE COURT: Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Doesn't matter whether it's loaded. If  
17 it's a firearm capable of firing a bullet, it's a firearm. Do  
18 you understand that? As long as it's capable of shooting a  
19 bullet, it's a firearm.

20 THE DEFENDANT: Would a BB gun or a pellet gun be  
21 included in that?

22 THE COURT: It's not a bullet and --

23 THE DEFENDANT: Oh, pellet. It's not a bullet.

24 THE COURT: It's just a pellet.

25 THE DEFENDANT: It's not a -- it doesn't have powder

1 in it, no.

2 THE COURT: That's right. But, now, you need to talk  
3 to your counsel and be sure you understand all of the different  
4 definitions because this definition would also include the  
5 frame or receiver of a firearm. It would also include  
6 explosives and also include other matters. What am I thinking  
7 about? There's something else that's a firearm.

8 MR. LaMARCA: Ammunition.

9 THE COURT: Ammunition. That's what I was -- that's  
10 what I was thinking about previously. Thank you. It also  
11 includes ammunition.

12 THE DEFENDANT: Okay.

13 THE COURT: Do you understand that too? So if you  
14 have any of those items in your home or car or in a place over  
15 which you have control from which you may readily obtain the  
16 item, you'd be in violation of this.

17 Now, finally, this prohibition about having a firearm  
18 will last for the rest of your life. Now, listen to me on this  
19 one.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: For the rest of your life. Some state  
22 laws have a law similar to this; but under those particular  
23 state laws, as soon as a person finishes serving his sentence  
24 and is finished with probation or supervised release the  
25 individual can then take possession of -- or own a firearm

1 under that state law, not federal law, but under that state  
2 law.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: But here we're talking about federal law.  
5 And under federal law this prohibition about owning a firearm  
6 will last for the rest of your life. Do you understand that  
7 now?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And for that is a strict punishment,  
10 because if the prosecution discovers that you own or possess a  
11 firearm, then the prosecution will charge you. And the penalty  
12 is a strict penalty that includes incarceration. Do you  
13 understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Any questions about anything I've said?

16 THE DEFENDANT: No, sir.

17 THE COURT: Mr. Bain, any questions?

18 MR. BAIN: No, your Honor.

19 THE COURT: Let me turn to Mr. LaMarca. Mr. LaMarca,  
20 any other matters that need to come before me?

21 MR. LaMARCA: Yes, your Honor. We do have to submit  
22 to the court an agreed preliminary order of forfeiture  
23 regarding the \$200,000 money judgment that's been executed by  
24 the defendant, the defense's lawyer -- or the defendant's  
25 lawyer I should say and the government, your Honor.

1 THE COURT: Mr. Waggoner, is that correct, that you  
2 executed that document?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you understand what it says?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And did you sign it knowingly,  
7 intelligently?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Mr. Bain, are you satisfied  
10 your client understood his rights before he signed that  
11 document?

12 MR. BAIN: Yes, your Honor.

13 THE COURT: In that case then the court will accept  
14 the document and file it after the court has signed it. Now,  
15 any other matters from the prosecution?

16 MR. LaMARCA: No, your Honor.

17 THE COURT: Any other matters from the defense?

18 MR. BAIN: No, your Honor.

19 THE COURT: All right, then. I'll see you all back  
20 here on the date announced for sentencing.

21 MR. BAIN: Thank you, your Honor.

22 THE COURT: Y'all can be excused.

23 MR. GILBERT: Thank you, your Honor.

24 MR. LaMARCA: Thank you, your Honor.

25 (PROCEEDINGS CONCLUDED)

## 1 CERTIFICATE OF REPORTER

2  
3 I, MARY VIRGINIA "Gina" MORRIS, Official Court  
4 Reporter, United States District Court, Southern District of  
5 Mississippi, do hereby certify that the above and foregoing  
6 pages contain a full, true and correct transcript of the  
7 proceedings had in the aforementioned case at the time and  
8 place indicated, which proceedings were recorded by me to  
9 the best of my skill and ability.

10 I certify that the transcript fees and format  
11 comply with those prescribed by the Court and Judicial  
12 Conference of the United States.

13 This the 22nd day of August, 2015.

14  
15 s/ Gina Morris  
16 U.S. DISTRICT COURT REPORTER  
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